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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA

3:16-CR-00051-BR-3

v.

**GOVERNMENT'S SENTENCING
MEMORANDUM**

JOSEPH O'SHAUGHNESSY,

**Sentencing Date: March 15, 2018
3:00 p.m.**

Defendant.

The United States of America, by Billy J. Williams, United States Attorney for the District of Oregon, and through Ethan D. Knight, Geoffrey A. Barrow, and Craig J. Gabriel, Assistant United States Attorneys, submits this memorandum for defendant Joseph O'Shaughnessy's sentencing, which is currently set for Thursday, March 15, 2018, at 3:00 p.m.

I. Summary of the Government's Position

The government is recommending a sentence of time served, to be followed by 2 years of supervised release.

II. Factual Background

On August 1, 2016, defendant Joseph O'Shaughnessy pleaded guilty under Rule 11(c)(1)(B) to Count 1 of the Superseding Indictment, charging Conspiracy to Impede Federal Officers by Force, Threat, or Intimidation under 18 U.S.C. § 372.

After extensive pretrial litigation and two jury trials, the Court is well aware of the facts surrounding the occupation of the Malheur National Wildlife Refuge ("MNWR") from January 2 through February 11, 2016. That background is also set forth in Paragraphs 17–38 of the Presentence Investigation Report ("PSR").

III. Advisory Sentencing Guidelines Calculation

The government recommends that the Court adopt the following guideline calculation:

- The **Base Offense Level is 10** under U.S.S.G. § 2X1.1(a) and U.S.S.G. § 2A2.4(a).
- Because a dangerous weapon (including a firearm) was possessed and its use was threatened, a **3-level upward adjustment** applies under U.S.S.G. § 2A2.4(b)(1)(B) and U.S.S.G. § 1B1.3(a)(1)(B).
- For defendant's acceptance of responsibility, a **2-level downward adjustment** applies under U.S.S.G. § 3E1.1.
- Because the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, a **5-level upward departure** applies under Application Note 4 to U.S.S.G. § 3A1.4.
- For defendant's early disposition of this complex case, a **3-level downward variance** applies under 18 U.S.C. § 3553(a).

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Defendant O'Shaughnessy therefore has a Total Offense Level of 13. This same Total Offense Level of 13 was previously agreed upon by the parties, but the method of calculation above is slightly different from the plea agreement. *See* PSR, at Note 1.

Defendant is in Criminal History Category I. In Criminal History Category I, Offense Level 13 yields an advisory guideline range of 12–18 months in Zone C.

IV. Joint Sentencing Recommendation

Pursuant to the plea agreement, the parties are jointly recommending a sentence of time served. The government had previously agreed to recommend a sentence at the low-end of Offense Level 13 (i.e., 12 months); however, defendant has already served more than 12 months in custody between both this case and his Nevada case, which was dismissed earlier this year. The government believes that a sentence of time served, to be followed by 2 years of supervised release, is sufficient, but not greater than necessary, to comply with the factors set forth in 18 U.S.C. § 3553(a).

V. Restitution

Defendant O'Shaughnessy has previously stipulated to a \$7000 restitution order in this case. *See* ECF No. 2259.

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VI. Conclusion

For the reasons stated above, the government respectfully recommends a sentence of time served, to be followed by 2 years of supervised release, with the standard conditions for the District of Oregon and the special conditions listed in the Presentence Investigation Report.

Dated this 12th day of March 2018.

Respectfully submitted,

BILLY J. WILLIAMS
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s/ Craig J. Gabriel

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